Shoddy

SUPREME COURT OF THE UNITED STATES.

No. 510.—October Term, 1925.

D. E. Weaver, Chief of the Bureau of Inspection, Department of Labor and Industry of Pennsylvania, Appellant,
vs.
The Palmer Brothers Company.

Appeal from the District Court of the United States for the Western District of Pennsylvania.

[March 8, 1926.]

Mr. Justice Butler delivered the opinion of the Court.

Appellee is a Connecticut corporation, and for more than 50 years it and its founders have manufactured comfortables in that State, and have sold them there and in other States. An Act of the legislature of Pennsylvania, approved June 14, 1923, regulates the manufacture, sterilization and sale of bedding. Section 1 of the Act prescribes the following definitions: "Mattress" means any quilted pad, mattress, mattress pad, mattress protector, bunk quilt or box spring, stuffed or filled with excelsior, straw, hay, grass, corn husks, moss, fibre, cotton, wool, hair, jute, kapok, or other soft material. "Pillow", "bolster", or "feather bed" means any bag, case, or covering made of cotton or other textile material, and stuffed or filled with any filler mentioned in the definition of mattress, or with feathers or feather down. The word "comfortable" means any cover, quilt, or quilted article made of cotton or other textile material, and stuffed or filled with fibre, cotton, wool, hair, jute, feathers, feather down, kapok, or other soft material. "Cushion" means any bag or case made of leather, cotton, or other textile material, and stuffed or filled with any filler, except jute and straw, mentioned in the definition of "pillow," or with tow. The word "new" as used in the Act means any material or article which has not been previously manufactured or used for any purpose. "Secondhand" means any material or article of which prior use has been made.

"Shoddy" means any material which has been spun into yarn, knit or woven into fabric, and subsequently cut up, torn up, broken up, or ground up.

Section 2 provides: "No person shall employ or use in the making, remaking, or renovating of any mattress, pillow, bolster, feather bed, comfortable, cushion, or article of upholstered furniture: (a) Any material known as 'shoddy', or any fabric or material from which 'shoddy' is constructed; (b) any secondhand material, unless, since last used, such secondhand material has been thoroughly sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry; (c) any new or secondhand feathers, unless such new or secondhand feathers have been sterilized and disinfected by a reasonable process approved by the Commissioner of Labor and Industry." Punishment by fine or imprisonment is prescribed for every violation of the Act, and each sale is declared to be a separate offense.

The Act took effect January 1, 1924. Appellant is charged with its enforcement, and threatened to proceed against the appellee and its customers. January 29, 1924, appellee brought this suit to enjoin the enforcement of the Act on the grounds, among others, that, as applied to the business of appellee, it is repugnant to the due process and equal protection clauses of the Fourteenth Amendment. An application under § 266 of the Judicial Code for a temporary injunction was denied. The decree was affirmed by this court. 266 U. S. 588. Later defendant answered, and there was a trial at which much evidence was introduced. The District Court found that the statute infringes appellee's constitutional rights insofar as it absolutely prohibits the use of shoddy in the manufacture of comfortables; and to that extent the decree restrains its enforcement. This appeal is under § 238 of the Judicial Code.

The question for decision is whether the provision purporting absolutely to forbid the use of shoddy in comfortables violates the due process clause or the equal protection clause. The answer depends on the facts of the case. Legislative determinations express or implied are entitled to great weight; but it is always open to interested parties to show that the legislature has transgressed the limits of its power. *Penna. Coal Co.* vs. *Mahon*, 260 U. S. 393, 413. Invalidity may be shown by things which will be judicially noticed (*Quong Wing* v. *Kirkendall*, 223 U. S. 59, 64), or by facts

stablished by evidence. The burden is on the attacking party to stablish the invalidating facts. See *Minnesota Rate Cases,* 230 J. S. 352, 452.

For many years prior to the passage of the Act comfortables nade in appellee's factories had been sold in Pennsylvania. In 1923, its business in that State exceeded $558,000 of which more han $188,000 was for comfortables filled with shoddy. About 5000 dozens of these were filled with shoddy made of new materials, and about 3000 dozens with secondhand shoddy. Appellee makes approximately 3,000,000 comfortables annually, and about 750,000 of these are filled with materials defined by the Act as shoddy. New material from which appellee makes shoddy consists of clippings and pieces of new cloth obtained from cutting tables in garment factories; secondhand shoddy is made of secondhand garments, rags, and the like. The record shows that annually many million pounds of fabric, new and secondhand, are made into shoddy. It is used for many purposes. It is rewoven into fabric; made into pads to be used as filling material for bedding; and is used in the manufacture of blankets, clothing, underwear, hosiery, gloves, sweaters and other garments. The evidence is to the effect that practically all the woolen cloth woven in this country contains some shoddy. That used to make comfortables is a different grade from that used in the textile industry. Some used by appellee for that purpose is made of clippings from new woolen underwear and other high grade and expensive materials. Comfortables made of secondhand shoddy sell at lower prices than those filled with other materials.

Appellant claims that, in order properly to protect health, bedding material should be sterilized. The record shows that, for the sterilization of secondhand materials from which it makes shoddy, appellee uses effective steam sterilizers. There is no controversy between the parties as to whether shoddy may be rendered harmless by disinfection or sterilization. While it is sometimes made from filthy rags, and from other materials that have been exposed to infection, it stands undisputed that all dangers to health may be eliminated by appropriate treatment at low cost. In the course of its decision the District Court said, "It is conceded by all parties that shoddy may be rendered perfectly harmless by sterilization." The Act itself impliedly determines that proper sterili-

zation is practicable and effective. It permits the use of secondhand materials and new and secondhand feathers when sterilized, and it regulates processes for such sterilization.

There was no evidence that any sickness or disease was ever caused by the use of shoddy. And the record contains persuasive evidence, and by citation discloses the opinions of scientists eminent in fields related to public health that the transmission of disease-producing bacteria is almost entirely by immediate contact with, or close proximity to, infected persons; that such bacteria perish rapidly when separated from human or animal organisms; and that there is no probability that such bacteria or vermin likely to carry them survive after the period usually required for the gathering of the materials, the production of shoddy, and the manufacture and the shipping of comfortables. This evidence tends strongly to show that in the absence of sterilization or disinfection there would be little, if any, danger to the health of the users of comfortables filled with shoddy, new or secondhand; and confirms the conclusion that all danger from the use of shoddy may be eliminated by sterilization.

The State has wide discretion in selecting things for regulation. We need not consider whether the mere failure to forbid the use of other filling materials that are mentioned in the Act is sufficient in itself to invalidate the provision prohibiting the use of shoddy, as a violation of the equal protection clause. But the number and character of the things permitted to be used in such manufacture properly may be taken into account in deciding whether the prohibition of shoddy is a reasonable and valid regulation or is arbitrary and violative of the due process clause. Shoddy-filled comfortables made by appellee are useful articles for which there is much demand. And it is a matter of public concern that the production and sale of things necessary or convenient for use should not be forbidden. They are to be distinguished from things that the State is deemed to have power to suppress as inherently dangerous.

Many States have enacted laws to regulate bedding for the protection of health. Legislation in Illinois (Laws of 1915, p. 375), went beyond mere regulation and prohibited the sale of secondhand quilts or comfortables even when sterilized or when remade from sterilized secondhand materials. In *People* v. *Weiner,* 271

Ill. 74, the state Supreme Court held that to prohibit the use of material not inherently dangerous and that might be rendered safe by reasonable regulation transgresses the constitutional protection of personal and property rights.

The appellant insists that this case is ruled by *Powell* v. *Pennsylvania,* 127 U. S. 678. But the cases are essentially different. A law of Pennsylvania prohibited the manufacture, sale, or possession for sale, of oleomargarine. An indictment against Powell charged a sale and possession with intent to sell. At the trial he admitted the allegations and, for his defense, offered to prove certain facts which were excluded as immaterial. The question for decision was whether these facts were sufficient to show that, as applied, the law was invalid. Mr. Justice Harlan, speaking for the Court said (p. 682) that the purpose of these offers of proof was to "show that the article sold was a new invention, not an adulteration of dairy products, nor injurious to the public health, but wholesome and nutritious as an article of food . . . [p. 684.] It will be observed that the offer in the court below was to show by proof that the particular articles the defendant sold, and those in his possession for sale, in violation of the statute, were, in fact, wholesome or nutritious articles of food. It is entirely consistent with that offer that many, indeed, that most kinds of oleomargarine butter in the market contain ingredients that are or may become injurious to health. The court cannot say, from anything of which it may take judicial cognizance, that such is not the fact. Under the circumstances disclosed in the record, and in obedience to settled rules of constitutional construction, it must be assumed that such is the fact." And see *Powell* v. *Commonwealth,* 114 Pa. St. 265, 279, 295.

"Laws frequently are enforced which the court recognizes as possibly or probably invalid if attacked by a different interest or in a different way." *Quong Wing* v. *Kirkendall, supra,* 64. This is well illustrated by the *Powell* case compared with *Schollenberger* v. *Pennsylvania,* 171 U. S. 1. Every opinion is to be read having regard to the facts of the case and the question actually decided. *Cohens* v. *Virginia,* 6 Wheat, 264, 399. The facts clearly distinguish this case from the *Powell* case. There, it was assumed that most kinds of oleomargarine in the market were or might become injurious to health. Here, it is established that sterilization eliminates the dangers, if any, from the use of shoddy. As

against that fact, the provision in question cannot be sustained as a measure to protect health. And the fact that the Act permits the use of numerous materials, prescribing sterilization if they are secondhand, also serves to show that the prohibition of the use of shoddy, new or old, even when sterilized, is unreasonable and arbitrary.

Nor can such prohibition be sustained as a measure to prevent deception. In order to ascertain whether the materials used and the finished articles conform to its requirements, the Act expressly provides for inspection of the places where such articles are made, sold or kept for sale. Every article of bedding is required to bear a tag showing the materials used for filling and giving the names and addresses of makers and vendors, and bearing the word "secondhand" where there has been prior use, and giving the number of the permit for sterilizing and disinfecting where secondhand materials or feathers are used for filling. Obviously, these regulations or others that are adequate may be effectively applied to shoddy-filled articles.

The constitutional guaranties may not be made to yield to mere convenience. *Schlesinger* v. *Wisconsin*, decided March 1, 1926, — U. S. —. The business here involved is legitimate and useful; and, while it is subject to all reasonable regulation, the absolute prohibition of the use of shoddy in the manufacture of comfortables is purely arbitrary and violates the due process clause of the Fourteenth Amendment. *Adams* v. *Tanner*, 244 U. S. 590, 596; *Meyer* v. *Nebraska*, 262 U. S. 390; *Burns Baking Co.* v. *Bryan*, 264 U. S. 504.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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Mr. Justice Holmes, dissenting.

If the Legislature of Pennsylvania was of opinion that disease is likely to be spread by the use of unsterilized shoddy in comfortables I do not suppose that this Court would pronounce the opinion so manifestly absurd that it could not be acted upon. If we should not, then I think that we ought to assume the opinion to be right for the purpose of testing the law. The Legislature may have been of opinion further that the actual practice of filling comfortables with unsterilized shoddy gathered from filthy floors was wide spread, and this again we must assume to be true. It is admitted to be impossible to distinguish the innocent from the infected product in any practicable way, when it is made up into the comfortables. On these premises, if the Legislature regarded the danger as very great and inspection and tagging as inadequate remedies, it seems to me that in order to prevent the spread of disease it constitutionally could forbid any use of shoddy for bedding and upholstery. Notwithstanding the broad statement in *Schlesinger* v. *Wisconsin* the other day, I do not suppose that it was intended to overrule *Purity Extract & Tonic Co.* v. *Lynch*, 226 U. S. 192, and the other cases to which I referred there.

It is said that there was unjustifiable discrimination. A classification is not to be pronounced arbitrary because it goes on practical grounds and attacks only those objects that exhibit or foster an evil on a large scale. It is not required to be mathematically precise and to embrace every case that theoretically is capable of

doing the same harm. "If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied." *Miller* v. *Wilson*, 236 U. S. 373, 384. In this case, as in *Schlesinger* v. *Wisconsin*, I think that we are pressing the Fourteenth Amendment too far.

Mr. Justice BRANDEIS and Mr. Justice STONE concur in this opinion.